

SUMMARY: The applicant was discharged on 7 July 2017 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with a General discharge for Misconduct (Drug Abuse). The applicant appealed for an upgrade of his discharge characterization, a change to the discharge narrative reason and associated separation code, and a change to the reentry code.

The applicant was represented by counsel.

The applicant appeared and testified before the Discharge Review Board (DRB), with counsel, via video teleconference using Zoom on 24 October 2023. No witnesses were present to testify on the applicant's behalf.

The attached examiner's brief (provided to applicant only), extracted from available service records, contains pertinent data regarding the circumstances and character of the applicant's military service.

DISCUSSION: The Discharge Review Board (DRB), under its responsibility to examine the propriety and equity of an applicant's discharge, is authorized to change the characterization of service and the narrative reason for discharge if such changes are warranted. If applicable, the board can also change the applicant's reenlistment eligibility code. In reviewing discharges, the board presumes regularity in the conduct of governmental affairs unless there is substantial credible evidence to rebut the presumption, to include evidence submitted by the applicant. The Board completed a thorough review of the circumstances that led to the discharge and the discharge process to determine if the discharge met the pertinent standards of equity and propriety.

The documentary evidence the Board considered as part of the review includes, but is not limited to the DD Form 293, *Application for the Review of Discharge from the Armed Forces of the United States*, and any additional documentation submitted by applicant and/or counsel; the applicant's personnel file from the Automated Records Management System (ARMS); and the DRB Brief detailing the applicant's service information and a summary of the case.

Through counsel the applicant contended his discharge was improper because the command failed to properly record and document the separation proceedings against him. They argued the lack of discharge notification documents was prejudicial to the applicant because it was impossible to determine if his rights under AFI 36-3208 were met without these documents, and the DRB previously erred by presuming regularity in the absence of evidence. For which relief should be granted based on procedural error. Furthermore, the applicant contended his discharge was inequitable because he was denied the opportunity to present evidence in his defense when the charges were dropped.

A review of the applicant's record revealed he tested positive for cocaine during random urinalysis. His sample tested positive at 1911 ng/my and the DoD cutoff is 100 ng/ml. He was subsequently processed for administrative discharge.

The applicant testified at his hearing that although he tested positive for cocaine, he never knowingly or intentionally ingested cocaine, or any other controlled substance. The applicant also testified that charges were preferred against him and then later dropped due to a chain of custody issue with the drug test sample, and that these records were also not retained. Additionally, the applicant had an independent hair follicle test conducted and it was negative for any substances. Counsel argued the command relied on unsupported

allegations in determining the applicant's guilt and denied him the opportunity to properly defend himself by administratively separating him without adequate due process.

After a thorough review, the DRB found that the discharge package missing from the applicant's record to be an administrative error, not an error of injustice or impropriety. Furthermore, the DRB determined the applicant's contention that his urinalysis results were tainted was without merit as no evidence was submitted to defend this contention. The evidence showed the applicant had a positive urinalysis for cocaine, which was sufficient basis to support an administrative discharge. No evidence of inequity or impropriety were noted to warrant an upgrade to the applicant's character of service or narrative reason.

In making their decision regarding the applicant's request to change his reentry code, the Board considered the factors laid out in the attachment to the Under Secretary of Defense memorandum, *Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations*, dated 25 June 2018, known as the "Wilkie Memo." The Board considered the factors listed in paragraphs (6)(a)-(6)(l) and (7)(a)-(7)(r) of this memorandum, including the length of time since the applicant's misconduct and the degree to which the requested relief is necessary for the applicant to pursue a career in law enforcement and determined relief was warranted.

FINDING: The DRB voted unanimously to *deny* the applicant's request to upgrade his discharge characterization and change the discharge narrative reason and associated separation code. The DRB also voted 2 to 1 to *approve* changing the applicant's reentry code.

Should the applicant wish to appeal this decision, the applicant must seek relief before the Air Force Board for Correction of Military Records (AFBCMR) in accordance with DAFI 36-2603, *Air Force Board for Correction of Military Records*.

CONCLUSION: After a thorough review of the available evidence, to include the Applicant's issues, summary of service, service/medical record entries, and discharge process, the Board granted partial relief on the basis of equity and clemency. Therefore, the awarded characterization of service shall remain "General," the narrative reason for separation shall remain "Misconduct (Drug Abuse)," and the reentry code shall change to "3K." The Air Force DRB (AFDRB) results were approved by the board president on 01 November 2023. If desired, the applicant can request a list of the board members and their votes by writing to:

Air Force Review Boards Agency
Attn: Discharge Review Board
3351 Celmers Lane
Joint Base Andrews, NAF Washington, MD 20762-6602
Instructions on how to appeal an AFDRB decision can be found at
<https://afrbportal.azurewebsites.us>

Attachment:
Examiner's Brief (Applicant Only)

